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Rep. Kurt Heise
Chairman
House Criminal Justice Committee

Thank you for the opportunity to testify in support of House Bill 4481. For the past several years, I have dedicated myself as an attorney and advocate for rights protective of women who mother through rape. I am testifying today, however, in my role as a rape survivor.

Over ten years ago, while a college student, I was raped. I soon learned that I was one of the approximately 25,000 to 32,000 U.S. women who become pregnant through rape each year. My pregnancy brought a host of emotions: shock, fear, confusion. But most profoundly, I also was experiencing an emotion toward my unborn child that I would not be able to articulate for months, an emotion that surprised and enlivened me. My body—a body which felt so dead after my rape—had not only created life but was nurturing life, and I was amazed. I felt a sort of kinship, a partnership—perhaps the kind that only develops between those who have suffered together—but, nevertheless, I felt a bond with the life growing inside of me. In October 2004, I gave birth to a baby girl and made a choice that at least a third of other raped women make each year: I chose to raise my rape-conceived child.

I thought the worst was behind me; I could not have been more wrong.

Not long after my daughter's birth and just as the full weight of the case against my attacker was being felt, my attacker sought full custody of my daughter. I naively thought there was not a court in America that would entertain granting a rapist parental rights: I was wrong. You see, without explicit legislative authority permitting judges to terminate and/or restrict the parental rights of men who father through rape, judges too often feel compelled to grant *some* rights. In one case out of Minnesota where there are no laws explicitly restricting the parental rights of men who father through rape, a raped woman has been ordered to make parental decisions with her attacker via email and to exchange her child with her attacker in a public place. These solutions—although creative—are no solutions at all. Just ask the mother of that child who relieves the trauma of her own rape when her child returns to her home after a paternal visitation smelling like her rapist. Other women have been more fortunate—their attackers were not interested in the power they gained by exercising custody privileges. Instead, their attackers were interested in leverage. North Carolina passed its rape-conception parental rights law based on the testimony of three women who had felt forced to bargain with their rapists because of the absence of protective laws in their state: child custody protections in exchange for not testifying against their attackers.

Women should not be forced to co-parent with their attackers. Nor should they feel compelled to bargain with their attackers because the state in which they live has not provided them with adequate protections under the law. Michigan should be the next state to join the many others enacting laws to stop this from happening.

For such a law to be workable, it should not contain a criminal rape-conviction requirement, as Michigan currently requires. By now, you have heard the statistics and know

that few rapes are prosecuted: so requiring a criminal rape conviction will fail to help the majority of raped women.

But requiring a criminal conviction is problematic for other reasons. Even where a criminal prosecution is brought, a raped woman may be unable to secure a criminal conviction for the specific sexual act specified in Michigan's current rape-conception statute. This is because prosecutors may allow rapists to plea bargain—that is, "plead[] guilty to a lesser related offense"—in order to avoid the lengthy, costly, and uncertain process of trial. Indeed, this has occurred. In *Bobbitt v. Eizenga*, the Court of Appeals of North Carolina held that the trial court erred in dismissing the complaint of a convicted rapist who had sought visitation rights of the child conceived during his act. In order to avoid trial, the father had pleaded guilty, pursuant to a plea bargain, to "attempted statutory rape." Reasoning that North Carolina's rape-conception statute only applies to first- or second-degree rape—and not to "attempted statutory rape"—the Court of Appeals reinstated the father's request for visitation rights. (The Court of Appeals noted the oddity of "how completion of the elements necessary to constitute the offense of attempted statutory rape resulted in the birth of a child." This only underscores that plea bargained offenses do not often reflect the true nature—or severity—of the crime.) The same result could happen in Michigan if the current criminal rape conviction requirement is permitted to stand.

Moreover, even when a raped woman is able to secure a criminal rape conviction, she still may not be protected in Michigan. Given that "a conservative estimate of the time from the date of the crime to the date of the sentencing is anywhere from six months to two years," a raped woman may be required to have her child interact with her rapist for months or even years if the custody determination proceeding comes before the criminal proceeding, as it is likely to. As a result of this involvement, a court may determine that it is not in the best interests of the child to restrict parental rights where the lengthy period of time between the child's birth and the rapist father's eventual rape conviction has allowed him to establish a parental presence.

Additionally, I am puzzled by the Bar's Family Law Section's position opposing the bill over concerns that it would "require family courts to conduct criminal sexual conduct trials without any of the machinery or protections of the criminal court." To be clear, while the hearing would resemble a criminal sexual conduct trial, a finding by the family court that a child was rape-conceived would not be admissible in a subsequent criminal rape trial where the burden of proof and evidence requirements are more stringent. But more importantly, such trials are already authorized under Michigan law. Under Section 712A.19b of the Michigan Probate Code, a court may "terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that the parent, to cite but one example, has "caused physical injury or physical or sexual abuse" to the child. Like rape, child abuse and child sexual abuse are criminal concepts. Yet, Michigan courts permit the termination of parental rights, not merely where there is a criminal conviction for child abuse or child sexual abuse, but also where there is "clear and convincing evidence" of child abuse. *Why should raped women be held to a higher standard?* They should not. Indeed, "clear and convincing evidence" is the standard of proof used in the federal Rape Survivor Child Custody Act, which recently passed the U.S. Senate 99-0. It is also the standard used by 14 other states to have addressed rape-conception. The Bar's Family Law Section's position have not been realized in other states and are far outweighed by the need to provide effective protections for raped women.

As for me, my daughter is now 10 years old. After fighting my attacker for nearly two years, his parental rights were finally terminated. I got lucky. But prevailing under these circumstances should not be about luck. It should be about the law.

Thank you for your consideration,

Shauna R. Prewitt

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